REMARKS

Reconsideration of this application as amended is respectfully requested. In the Office Action, claims 1-54, 56-76 are pending.

35 U.S.C. §112 Rejections

In the Office Action, claims 1, 23-25, 54 are rejected under 35 U.S.C. 112, second paragraph as allegedly being indefinite.

Specifically, the Examiner said, regarding claims 1, 23-25, it is unclear how monitoring during transfer of media items can be performed to determine whether to transfer the media items, since the media items are already being transferred. The applicants believe that the language of the claims was sufficiently clear. Nevertheless, in order to expedite issuance of a patent in this case, the claims have been clarified to indicate that monitoring during transfer can cause a transfer of a second portion of the media items.

The Examiner also objected to the use of the word "previously" in claims 1, 23-25. The applicants believe that the meaning of the claim was clear, but have removed the word "previously" in order to expedite issuance of a patent in this case.

The Examiner also objected to the use of the words "high priority" in claim 54. The applicants believe that the meaning of the claim was clear, but have removed the word "high" in order to expedite issuance of a patent in this case.

The Examiner also objected to the use of the words "[the selection grants priority to] the plurality of devices with *no media items selected* from its respective prioritized list to watch" (emphasis Examiner's) in claim 54. The applicants believe that the meaning of the claim was clear, but have amended the claim to clarify that priority is granted to devices that have no media items currently available to watch.

35 U.S.C. §103 Rejections

In the Office Action, claims 1, 3, 8-11, 17-26, 28-31, 37, 39-41, 43, 45, 46, 53 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Kleinpeter III et al. (U.S. Patent No. 6,907,463, hereinafter "Kleinpeter et al.") in view of Harrow et al. (U.S. Patent 7,440,994) and further in view of Day (U.S. Patent 7,293,066). Applicants do not admit that the cited references are prior art and reserves the right to challenge the use of these references as

. prior art at a later date.

<u>The Alleged Prior Art</u>

Kleinpeter et al. apparently discloses a method to exchange files between users in a network environment. This method includes the steps of executing a software agent on multiple users' computing systems. These software agents establish a connection from their respective computing systems when logging into a network environment. An agent server, executed on the network environment, directs the software agents to establish direct connection between their respective computing systems in response to file requests from various users (See Abstract). The agent server determines a computer system having the requested file, and instructs the computer system retaining the requested file on how to transfer that file to the requesting user. In an event that a file transfer is interrupted, the server can determine what point in the file the transfer has been interrupted. (Kleinpeter column 2, lines 41-60).

Harrow et al. apparently discloses: "The present invention by providing a capability whereby network traffic may be shifted to another network may allow more efficient transfer of information, data, etc. One such example of shifting network traffic may be shifting WAN traffic to LAN peer-to-peer traffic." (Column 2, lines 12-16).

Day apparently discloses: "A data processing device, such as a television set top box, receives user-selected content data from a remote source over a network in response to user initiated content selection information. The data processing device stores the user-selected content data (e.g., readable or playable content data such as movies, text, audio, etc.) in an appropriate storage location of the data processing device. The data processing device enables a user to access only a portion of the user-selected content data stored therein. If the user forgoes a right to selectively retrieve certain content data, the data processing device enables user access to other user-selected content data in the storage location. Thus, if a user experiences a "change in heart," the user may forgo a right to play back certain content data for a right to selectively retrieve different portions of user-selected content data in the data processing device." (Abstract).

A discussion of cited references associated with dependent claims are omitted as unnecessary because the independent claims are believed to be allowable. The applicants

reserve the right to discuss the cited references later if necessary, and do not acquiesce to the Examiner's rejections of the dependent claims.

The Alleged Prior Art Distinguished

To render a claim obvious, the cited references must teach or suggest each and every element of the claim. Applicants respectfully submit that Kleinpeter et al., Harrow et al., and Day, individually or in combination, do not teach or suggest every element of claim 1. Claim 1 includes the language:

hosting an online catalog having a selection of media items available from a central repository, wherein at least some of the media items have been transferred from the central repository to some of the clients;

responsive to the online catalog, receiving from each client a prioritized list of media items selected from the online catalog;

based on the prioritized lists of the media items received from the clients and based on where various media items reside, determining a schedule for transferring media items;

transferring a first subset of the media items pursuant to the schedule, including transferring at least some of the items between clients using peer-to-peer connectivity;

monitoring the prioritized lists of the media items received from the clients during the transferring of a first subset of the media items to determine whether to transfer a second subset of the media items from the central repository or from some of the clients.

According to Kleinpeter et al., users submit a list of requested files to a central web server, and an agent server organizes the requested files and matches them with the nearest available agents with the requested files (Kleinpeter et al., column 1, lines 58-64). As illustrated in its Figure 3B, Kleinpeter et al.'s agent server receives from agents various file transferring results, such as "success", "active agent cannot communicate with the passive agent", "file does not exist", "error in getting file", or "client never got file", etc. However, these results are generated when the transferring of the requested files are completed, either successfully, or unsuccessfully. Generating these results cannot be construed as monitoring the lists of requested files <u>during</u> the transferring of the files. Kleinpeter et al. do not teach or suggest "monitoring the prioritized lists of the media items received from the clients during the

transferring of a first portion of the media items to determine whether to transfer a second portion of the media items from the central repository or from some of the clients." The applicants note that the Examiner has failed to make a prima facie case regarding the monitoring language, asserts at page 5 of the Office Action that Kleinpeter et al. does not disclose a central repository, and asserts at page 6 of the Office Action that Kleinpeter et al. do not disclose a prioritized list. The Examiner relies upon Harrow et al. to make up for some of these deficiencies.

According to Harrow et al., traffic is monitored to track transfers of clients and from which source a file should be sent (column 8, lines 27-29). However, after a careful reading of the Harrow et al. reference, the applicants have found no teaching regarding monitoring lists of requested files <u>during</u> the transferring of files. The Examiner asserts at page 6 of the Office Action that Harrow et al. do not disclose a prioritized list, and relies upon Day to make up for this deficiency.

However, the Examiner does not make a prima facie case that Day discloses monitoring lists of requested files during the transferring of files. After a careful reading of the Day reference, the applicants have found no teaching regarding monitoring lists of requested files <u>during</u> the transferring of files.

Since the cited references, whether considered alone or in combination, at least fail to disclose "monitoring lists of requested files during the transferring of files," claim 1 is allowable over the cited references. Claims 2-22, which depend from claim 1, are allowable at least for depending from an allowable base claim. Claims 23-25 and 54 are allowable for reasons similar to those described with reference to claim 1. Claims 26-53 and 56-76, which depend respectively from claims 25 and 54, are allowable at least for depending from an allowable base claim.

The applicants respectfully assert that the amendments to claim 1 were for the purpose of clarification; the claims available to the Examiner were sufficient to perform a search of the prior art and were sufficient to overcome the cited references. Accordingly, the applicants respectfully request that if the Examiner is inclined to issue another Office Action, that the Office Action be non-final.
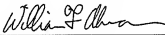
Conclusion

A Notice of Allowance is respectfully requested. Should the Examiner find that a telephone or in-person conference would expedite the prosecution of this Application further, he is invited to contact the Applicants' counsel at the contact listed below for such a conference.

Please charge any deficiency in fees or credit any overpayment to our Deposit Account No. 50-2207, from which the undersigned is authorized to draw.

Dated: August 11, 2009

Respectfully submitted,

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